

HUMAN SERVICES

DIVISION OF MENTAL HEALTH SERVICES

Community Mental Health Services Act

Licensure of Mental Health Programs

Proposed Amendments: N.J.A.C. 10:37-10.2, 10.4 and 10.7 through 10.11

Proposed Repeal: N.J.A.C. 10:37-10.3

Authorized By: James M. Davy, Acting Commissioner, Department of Human Services

Authority: N.J.S.A. 30:9A-10 and 21

Calendar Reference: See Summary below for an explanation of the exception to the rulemaking calendar requirements.

Proposal Number: PRN 2004 - 148

Submit comments by June 18, 2004 to:

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The agency proposal follows:

### Summary

The Department of Human Services' Office of Licensing was established in 2002 to streamline the administration and improve the consistency and coordination of licensing practices in the Department. Operating within the Department's Office of Program Integrity and Accountability, the Office of Licensing consists of three operational units formerly under the auspices of the Division of Developmental Disabilities, Division of Mental Health Services and Division of Youth and Family Services. The Office of Licensing is responsible for more than 16,000 regulated programs serving children and adults.

While the administration and management of licensing operations for these programs was transferred from their respective Divisions to the Department, the regulatory authority for these programs is delegated to the Divisions under current rules. This proposal seeks to transfer regulatory authority for licensing mental health services from the Division of Mental Health Services to the Department of Human Services, in order to reflect the administrative reorganization of licensing and related operations. Amendments are also proposed to update terminology and rules to reflect current practice.

The Division will place a public notice of the proposed readoption in four newspapers of general circulation, the Star-Ledger, the Trenton Times, the Asbury Park Press, and the Camden Courier-Post. Notice of the proposal will also be posted on the Department of Human Services' World Wide Web site and sent to the media with offices in the State House.

N.J.A.C. 10:37 addresses several components of community mental health services, including the State Community Mental Health Citizens Advisory Board, County Mental Health Boards, consumer requirements, program element requirements, general administrative requirements, grants for construction assistance, quality assurance, licensure and children's partial care programs. Amendments concerning licensure fees were proposed September 15, 2003 at 35 N.J.R. 4200(b) and adopted effective March 1, 2004 at 36 N.J.R. 1203(a). The Department now proposes further amendments to the licensure requirements in Subchapter 10; no amendments to other subchapters are proposed. The proposed amendments are summarized below.

The proposed amendments at N.J.A.C. 10:37-10.2 change references from Division to Department in the definitions of the terms "deemed

status,” “Director,” “licensure standards” and “recognized accrediting bodies.” The Department, rather than the Division, will be authorized to grant deemed status to a mental health program which has received accreditation by an accrediting body recognized by the Department. The term "Director" will be defined as the Director of the Office of Licensing, rather than the Director of the Division of Mental Health Services. The proposed amendments also delete the existing definitions of “certified program” and “Medicaid approved program,” as these terms are now unnecessary. Programs previously regulated as certified programs or Medicaid approved programs will now be regulated in the same manner as other programs.

Existing N.J.A.C. 10:37-10.3 is proposed for repeal as this section is now obsolete. The section specifies licensing requirements for mental health programs existing prior to July 2, 2001, which became subject to licensure on that date. Since all such programs must now comply with this chapter in the same manner as other programs, there is no need for a rule addressing these programs exclusively.

The proposed amendments at N.J.A.C. 10:37-10.4 change references from Division to Department in the rules concerning the licensure process;

indicate that licensure-related inquiries should be addressed to the Office of Licensing; and clarify the procedure for an accredited program to request deemed status.

The proposed amendments at N.J.A.C. 10:37-10.7 delete a reference to N.J.A.C. 10:37-10.3, which is proposed for repeal; change references from Division to Department in the rules concerning site reviews; indicate that site reviews will be conducted or led by Department staff; indicate that site review teams may include representatives from the Division of Mental Health Services, other divisions of the Department and/or other departments; and clarify the procedure for submitting a plan for improvement.

The proposed amendments at N.J.A.C. 10:37-10.8 change references from Division to Department in the rules concerning types of licensure, and delete references to N.J.A.C. 10:37-10.3, which is proposed for repeal.

The proposed amendments at N.J.A.C. 10:37-10.9 change references from Division to Department in the rules concerning waivers; indicate that requests for waivers of specific rules must be made to the Department;

and indicate that waivers will be considered provided that in the opinion of the Director, in consultation with the Director of the Division of Mental Health Services, the waiver is justified and would not endanger or adversely affect the life, safety or welfare of clients.

The proposed amendments at N.J.A.C. 10:37-10.10 change references from Division to Department in the rules concerning license renewal or revocation, and clarify terminology for refusal to renew a license. The Department, rather than the Division, will be authorized to renew, revoke or refuse to renew a license, issue a conditional license or impose administrative sanctions.

The proposed amendment at N.J.A.C. 10:37-10.11 indicates that if licensure is denied, revoked or not renewed and the mental health program disputes the basis of the action, the mental health program may apply to the Director of the Division of Mental Health Services for a review, prior to requesting an administrative hearing. The amendment would not change current practice, but is necessary to clarify the meaning of the term "Director" in this section, since the term is defined as the Director of the Office of Licensing in the proposed amendments at N.J.A.C. 10:37-10.2.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### Social Impact

The licensure of providers of mental health services positively impacts consumers, provider agencies, and the general public. The licensure program establishes and maintains standards which promote the effective delivery of high quality services. The provision of these services and the utilization of these standards promote greater independence and improved quality of life among the consumers receiving the services. Additionally, the standards assist provider agencies by serving as benchmarks in their pursuit of providing high quality services. The public benefits from these rules because they promote the effective and efficient expenditure of public revenue. Insofar as the proposed amendments establishing the Department's regulatory authority will ensure the effective continuation of the licensure program, they will benefit consumers, providers and the general public. The proposed transfer of regulatory authority from the Division to the Department will benefit consumers, providers and the

general public by enabling the Department to streamline the administration and improve the consistency and coordination of licensing practices.

#### Economic Impact

The proposed amendments and repeal will have no economic impact on regulated programs, the Department or the Division.

#### Federal Standards Statement

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt, or amend any State rule that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed amendments and repeal are not promulgated under the authority of or in order to implement, comply with or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards or requirements. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) do not require a Federal standards analysis.

### Jobs Impact

The proposed amendments and repeal will not result in the generation or loss of any jobs.

### Agriculture Industry Impact

The proposed amendments and repeal will have no impact on the agriculture industry.

### Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the regulated agencies subject to the proposed amendments include several small businesses. The proposed amendments and repeal are necessary to reflect the administrative reorganization of licensing operations. Therefore, no differentiation or lessening of these requirements for small businesses is proposed. The proposed amendments will not impose reporting or recordkeeping requirements on small businesses nor require capital expenditures or professional services in order to comply with the rules.

### Smart Growth Impact

The proposed amendments and repeal will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 10:37-10.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

["Certified program" means a program funded by the Division which is in good standing as of July 2, 2001 and which has no major contract or program standard deficiencies.]

...

"Deemed status" means that status granted to a mental health program which has received accreditation by an accrediting body recognized by the [Division] Department. In effect, the [Division] Department, through the

granting of deemed status, substitutes the standards of the accrediting body for certain selected [Division] Department program standards.

...

"Director" means the Director of the [Division of Mental Health Services] Office of Licensing within the Department of Human Services.

...

"Licensure standards" means those rules promulgated by the [Division] Department with which mental health programs shall comply in order to be granted a license.

["Medicaid approved program" means a mental health program inspected by the Division and approved to provide Medicaid reimbursable mental health services reimbursable by the Division of Medical Assistance and Health Services.]

...

"Recognized accrediting bodies" means those organizations that accredit mental health programs that are recognized by the [Division] Department for deemed status purposes. These organizations are the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Council on Accreditation of Family Services Agencies (COA), the Council on Accreditation of Rehabilitation Facilities (CARF) and the National Commission on Quality Assurance (NCQA).

10:37-10.3 [Initial licensure for pre-existing mental health programs]

(Reserved)

[(a) This section sets forth the licensing requirements for mental health programs existing prior to July 2, 2001.

(b) All mental health programs which contract with, or are funded by, the Division and certified on July 2, 2001, shall be issued a license once the Department determines that there are no major outstanding contract or program deficiencies. The license so provided shall be for a period up to three years or until the next Division site review, whichever occurs first.

(c) A mental health program which, on July 2, 2001, is not certified by the Division but is accredited at the time of application by a recognized accrediting body, may apply for licensure and, upon the Division's review and approval of the application for licensure and the accreditation report, may be given deemed status and a provisional license may be issued, which shall be effective until completion of a Division site review indicating compliance with all applicable standards and issuance of a full license.

(d) A mental health program which is approved by DMAHS as a provider of mental health services, has been inspected by the Division since 1998, and has no outstanding major program deficiencies, may apply for licensure and may receive a provisional license until completion of a

Division site review indicating compliance with all applicable standards and issuance of a full license.

(e) All operating mental health programs not identified in (a), (b), (c) and (d) above, shall apply for licensure by September 30, 2001. A mental health program which completes such application shall be subject to a preliminary site inspection to ensure compliance with all Level I standards. A provisional license shall be issued pending completion of a full licensing site review indicating compliance with all applicable standards.]

#### 10:37-10.4 Licensure process

(a) All inquiries related to licensure of mental health programs shall be made to:

New Jersey [Division of Mental Health Services] Department of Human Services

[Bureau] Office of Licensing [and Inspections]

Mental Health Licensing

[Capital Center,] PO Box 727

Trenton, New Jersey 08625-0727

(b) Mental health programs which intend to become licensed shall complete an application for licensure indicating the type(s) of mental

health program(s) provided, and the specific location and addresses where the mental health program(s) is or will be provided.

1. (No change.)

2. The mental health program requesting licensure shall demonstrate the capacity to operate the mental health program in accordance with [Division] Department rules.

(c) Deemed status may be considered as part of the [Division] Department licensing process for community mental health programs in those cases where:

1. A mental health program is accredited at the time of application within the past three years by an accrediting body recognized by the [Division] Department; and

2. The program submits the accrediting body report with the license application indicating that the [program(s) for which they seek deemed status are] program is accredited. As applicable, any remediation plan required by the accrediting body shall also be submitted.

(d) A mental health program applying for initial licensure shall pay an application fee in the amount specified in N.J.A.C. 10:37-10.5. After initial licensure, the mental health program shall pay an annual licensure renewal fee in the amount specified in N.J.A.C. 10:37-10.5. No license shall be issued or renewed until payment in full has been received by the

[Division] Department. No licensure fees shall be refunded. Failure to submit the appropriate licensure fee in a timely manner shall result in revocation of the license. Payment of licensure renewal fees must be received by the [Bureau of Licensing and Inspections] Department on or before the expiration date of the issuance of the license. Payment shall be submitted with the application for initial or renewed licensure.

#### 10:37-10.7 Site reviews

(a) Site reviews shall be conducted for each separate site location of every mental health program.

1. (No change.)

2. [Except as provided in N.J.A.C. 10:37-10.3, following (the effective date of these rules), site] Site reviews shall occur prior to licensing any new mental health program and/or site.

3. (No change.)

(b) - (c) (No change.)

(d) Site reviews shall be conducted by individual staff of the [Division] Department or by a team coordinated and led by staff of the [Division] Department.

1. (No change.)

2. Teams may include representatives from [divisions and/or departments other than Mental Health Services and Human Services] the Division of Mental Health Services, other divisions of the Department and/or other departments.

(e) – (g) (No change.)

(h) Following the site review, an official report of findings shall be issued by the [Division] Department within 60 to 90 days.

(i) Within 40 calendar days of receipt of the official report, the mental health program shall send a written response to the official report, including a [time framed] plan for improvement with specific time frames.

This response shall be attached to the report and together shall constitute a public document.

(j) – (k) (No change.)

#### 10:37-10.8 Types of licensure

(a) Mental health programs will receive a full license if:

1. (No change.)

2. A [Division] Department site review determines the program complies with all Level I and the majority of Level II standards.

(b) A provisional license may be issued whenever a mental health program submits with its complete application the appropriate fee, the

[Division] Department has reviewed the program's policies and procedures and has conducted a program site tour, and whenever:

1. – 2. (No change.)

(c) [Except as provided in N.J.A.C. 10:37-10.3(b), (c) and (d), a] A provisional license may be issued to a specific facility address for a period of six months, or until completion of a full site review by the [Division] Department. A provisional license may be renewed if needed by the [Division] Department.

(d) A conditional license may be issued whenever:

1. – 2. (No change.)

3. A remediation plan is not submitted to the [Division] Department at the designated time, or if it is determined by the [Division] Department to be inadequate; or

4. (No change.)

(e) (No change.)

#### 10:37-10.9 Waiver

(a) Waivers of specific rules shall be considered, provided that, in the opinion of the Director [or designee] in consultation with the Director of the Division of Mental Health Services, or their designees, such waiver is

justified as outlined below and would not endanger or adversely affect the life, safety or welfare of clients.

(b) Requests for waiver shall be made to the [Division] Department, in writing to the address as listed in N.J.A.C. 10:37-10.4(a). The written request for waiver shall include the following:

1. – 4. (No change.)

(c) The [Division] Department reserves the right to request additional information before processing a request for waiver.

#### 10:37-10.10 License renewal or revocation

(a) License renewal for a mental health program shall be based on a [Division] Department licensing site review every three years to determine that the program continues to meet [Division] Department standards.

(b) – (d) (No change.)

(e) The [Division] Department may revoke the license, or [deny renewal of] refuse to renew the license, if the mental health program is not in compliance with licensing rules; does not submit the licensure renewal fee; or if continued operation of the mental health program presents an imminent danger to the health, safety or welfare of any client; or for failure to submit the specified written response to a site review report by the required date; or for failure to correct any identified area of non-

compliance within the time frame approved by the [Division] Department in the notice of non-compliance.

(f) The [Division] Department may, in lieu of revocation or [denial of renewal of] refusal to renew a license, issue a conditional license and/or elect other administrative sanctions to include, but not be limited to, prohibiting the mental health program from continuing to admit clients, or [to require] requiring the removal/relocation/referral of clients to other licensed provider(s).

(g) In the event that the [Division] Department revokes or does not renew the license, the Director shall send written notice to the mental health program's chief executive officer or designee and to the mental health program's board of directors or owners indicating the basis for the revocation or non-renewal and the rights to a review as provided at N.J.A.C. 10:37-10.10 and an administrative hearing as provided at N.J.A.C. 10:37-10.11.

#### 10:37-10.11 Review of administrative determinations

Whenever licensure is denied, revoked or not renewed and the mental health program disputes the basis of the action, the mental health program may apply to the Director of the Division of Mental Health Services for a

review and a final agency decision shall be rendered within 30 days of the receipt of the written request for a review.